

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:
CHARLES E. YOUNG, JR.,

Debtor(s)

Case No: B-0982255 C-13D

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee ("Trustee") and respectfully objects to confirmation of the Debtor's plan pursuant to 11 U.S.C. §1325 and shows unto the Court the following:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on December 17, 2009, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On December 17, 2009, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Standing Order entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The petition filed by the Debtor proposes a monthly plan payment of \$607.00 for a period of 60 months. The return to general unsecured creditors is proposed at \$5,947.00 due to the Debtor's disposable monthly income. The Debtor lists unsecured debt of approximately \$7,345.00 in Schedule "F".
5. The Debtor has filed with the petition a Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, known as Official Form B22C ("Form B22C"). The Debtor lists current monthly income ("CMI") in Form B22C of approximately \$3,417.86.
6. Because the Debtor's CMI exceeds the median income figure for a family of the same size in North Carolina, section 1325(a)(3) must be used to determine the amount of the Debtor's reasonable and necessary deductions and the Debtor's disposable income, if any. In Form B22C, the Debtor lists monthly disposable income on line 59 of \$99.13.

7. The applicable commitment period in this case is sixty months. 11 U.S.C. §1325(b)(4).
8. The Internal Revenue Service (“IRS”) has filed a claim in the amount of \$30,057.52 representing taxes for years 1996, 2007 and 2008. The IRS asserts in its claim that no returns have been filed for tax years 2007 and 2008; however, the Debtor testified at his creditor’s meeting that he had filed all tax returns for the last four years.
9. The Trustee objects to confirmation of the Debtor’s plan in that the Debtor is not devoting all of his projected disposable income to fund the plan pursuant to 11 U.S.C. §1325(b). The Debtor runs a janitorial service and lists business expenses of \$841.75, which includes payments on a 2006 Dodge in the amount of \$200.00 per month. The Debtor deducts the vehicle payment on line #3 of Form B22C as part of the Debtor’s business expenses, then takes a deduction for the vehicle payment again on line #47(b) for \$133.33. The deduction on line #47(b) is improper and should be disallowed. With the removal of the deduction, the Debtor should have disposable income of approximately \$232.46 per month, or \$13,947.60 over a period of 60 months.
10. The Trustee objects to confirmation of the Debtor’s plan pursuant to 11 U.S.C. §1325(a)(9) in that the IRS has apparently failed to receive all applicable tax returns required under 11 U.S.C. §1308. The Trustee requests a hearing for a determination of whether the Debtor has filed his 2007 and 2008 federal tax returns.

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtor’s plan not be confirmed in that the plan does not comply with the provisions of the Bankruptcy Code, specifically 11 U.S.C. §§1325(b) and 1325(a)(9), and the case be dismissed for cause pursuant to 11 U.S.C. §1307;
2. For such other and further relief as the Court may deem just or proper.

This the 24th day of March, 2010.

s/Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Charles E. Young, Jr., 3114 Ridgestone Pkwy., Durham, NC 27712, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 24th day of March, 2010.

s/Benjamin E. Lovell
Benjamin E. Lovell, Esq.
Attorney for the Standing Trustee